

IN THE UNITED STATES DISTRICT COURT.

FOR THE WESTERN DISTRICT OF VIRGINIA

ABINGDON DIVISION

|                           |   |                                    |
|---------------------------|---|------------------------------------|
| UNITED STATES OF AMERICA, | ) |                                    |
|                           | ) |                                    |
| Plaintiff,                | ) | Criminal Case No.                  |
|                           | ) | 1:17-cr-00027-JPJ-PMS-1            |
| vs.                       | ) |                                    |
|                           | ) |                                    |
| JOEL A. SMITHERS,         | ) | <b>TESTIMONY OF MICHELLE SMITH</b> |
|                           | ) | <b>ONLY</b>                        |
| Defendant.                | ) |                                    |

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PARTIAL TRANSCRIPT OF JURY TRIAL - DAY 2  
HONORABLE JUDGE JAMES P. JONES PRESIDING  
TUESDAY, APRIL 30, 2019

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#### A P P E A R A N C E S

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Proceedings taken by Certified Court Reporter and transcribed  
using Computer-Aided Transcription

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Official Court Reporter for the U.S. District Court Western District of Virginia

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**MARKED**

**RECEIVED**

ON BEHALF OF THE PLAINTIFF:

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1 (Requested transcript of Michelle Smith only of the  
2 proceedings commenced at 11:10 a.m.)

3 MR. RAMSEYER: The Government calls Michelle Smith.

4 THE CLERK: Please raise your right hand.

5 Do you solemnly swear that the testimony you're  
6 about to give in this case shall be the truth, the whole  
7 truth, and nothing but the truth, so help you God?

8 THE WITNESS: Yes.

9 THE CLERK: You may be seated.

10 **MICHELLE SMITH,**

11 Called as a witness herein by the Government, having been  
12 first duly sworn, was examined and testified as follows:

13 **DIRECT EXAMINATION**

14 BY MR. RAMSEYER:

15 Q. Please state your name.

16 A. Michelle Smith.

17 Q. I need you to speak up, please.

18 A. Michelle Smith.

19 Q. All right. Michelle, where do you live? Just the city  
20 and state, I'm not asking for the address.

21 A. Pinsonfork, Kentucky.

22 Q. Pinson --

23 A. Yes.

24 Q. -- fork, Kentucky?

25 A. Yes.

1 Q. All right. And how long have you lived there  
2 approximately?

3 A. Fifteen years.

4 Q. Okay. How old are you?

5 A. Thirty-eight.

6 Q. And what do you do in Pinsonfork?

7 A. I have three children. I just --

8 Q. Are you employed?

9 A. Not right -- not currently, no.

10 Q. Okay. Did you used to be employed?

11 A. Yes.

12 Q. Where did you used to work?

13 A. ARH Hospital.

14 Q. Is that Appalachian Regional Healthcare?

15 A. Yes.

16 Q. And which hospital did you work at?

17 A. Tug Valley.

18 Q. Is that Tug Valley, West Virginia?

19 A. No. It's in South Williamson, Kentucky. It's in  
20 Kentucky.

21 Q. Okay. So just -- where you live is right on the  
22 Kentucky/West Virginia line; right?

23 A. Yes.

24 Q. And what did you do at ARH?

25 A. I worked in the kitchen.

1 Q. And approximately when did you work -- the years you  
2 worked there?

3 A. 2015-2017.

4 Q. All right.

5 A. I think.

6 Q. Now, have you ever seen the defendant before?

7 A. Yes.

8 Q. Okay. That's Joel Smithers; is that correct?

9 A. Yes.

10 Q. Okay. When did you see him?

11 A. I was his patient.

12 Q. Okay. Was that back in 2015?

13 A. I'm nervous. But I think so, yeah.

14 Q. Let me show you something.

15 A. Or '16.

16 MR. RAMSEYER: Judge, may I approach the witness?

17 THE COURT: You may.

18 BY MR. RAMSEYER:

19 Q. Ma'am, I'm showing you -- it's page number MS-34. It's a  
20 page from a patient file. Is that you, Michelle Smith?

21 A. Yes.

22 Q. Is that your handwriting?

23 A. Yes.

24 Q. Okay. It's got a date there. Do you see it?

25 A. Mm-hmm.

1 Q. What's the date?

2 A. 11-30-2015.

3 Q. Okay. So having seen that, does that -- do you believe  
4 that is when you first went to Dr. Smithers?

5 A. Yes.

6 Q. Sometime around 2015?

7 A. Yes.

8 Q. All right. Why did you go to him?

9 A. Honestly?

10 Q. Yes honestly. It's required.

11 A. Okay. My boyfriend was addicted to pills, and he was a  
12 patient.

13 Q. What was your husband's -- excuse me, your boyfriend's  
14 name?

15 A. Bryan Harlow.

16 Q. Is that B-r-y-a-n?

17 A. Yes.

18 Q. H-a-r-l-o-w?

19 A. Yes.

20 Q. So your boyfriend was addicted to pain medicine.

21 A. Yes.

22 Q. So having -- so you saw the effect that had on him;  
23 correct?

24 A. Yes.

25 Q. So why did you go to Dr. Smithers to get pain medicine?

1 A. Because he didn't get to keep all his prescriptions,  
2 so -- and he was buying 'em. So I just went so he could  
3 have -- hopefully not have to spend money.

4 Q. Okay. Well, explain that, what you mean by  
5 "he didn't get to keep all his prescriptions." What do you  
6 mean?

7 A. Well, he had worked it out with this guy that he would go  
8 and the guy would pay for everything, and they would split the  
9 prescription.

10 Q. Split the pills?

11 A. Yeah.

12 Q. Who was the guy?

13 A. Darryl Williams.

14 Q. Okay. So when you went to Dr. Smithers -- had you gone  
15 to his office before with Bryan --

16 A. No.

17 Q. -- but not as a patient?

18 A. No.

19 Q. Okay. So you went and what happened?

20 A. I seen him and he gave me a prescription.

21 Q. He gave you a prescription for pain pills?

22 A. Yeah. Yeah.

23 Q. Okay. And what did you do with them?

24 A. I think -- those weren't -- they were something different  
25 that we had never heard of. Or I -- I don't really know. I

1 gave them to Darryl. I don't know.

2 Q. Okay. You gave them to Darryl, then what happened with  
3 them?

4 A. I don't know.

5 Q. Did you get half of them?

6 A. Not those, no. I mean, they were, I guess, worthless. I  
7 don't know. My boyfriend didn't want them, so.

8 Q. But you got -- let me show you the prescriptions you got  
9 that first time.

10 MR. RAMSEYER: May I approach the witness,  
11 Your Honor?

12 THE COURT: You may.

13 BY MR. RAMSEYER:

14 Q. I'm going to show you page MS-25. It's a prescription  
15 for diclofenac sodium; do you see that?

16 A. Mm-hmm.

17 Q. That's to you, Michelle Smith; correct?

18 A. Yes.

19 Q. To ranitidine, r-a-n-i-t-i-d-i-n-e. And that's -- both  
20 of these are dated November 30th, 2015; correct?

21 A. Yes.

22 Q. Next time for Zanaflex, dated November 30, 2015. That's  
23 page MS-27; correct?

24 A. Yes.

25 Q. MS-28, for November 30th of 2015, for Neurontin; correct?



1 A. Yes.

2 Q. MS-29, November 30th, 2016, for nortriptyline. Again, to  
3 you; correct?

4 A. Yes.

5 Q. MS-30, November 30th, 2015, morphine sulfate, 60 tablets;  
6 correct?

7 A. Yes.

8 Q. And also November 30th, 2015, oxycodone, 30 tablets, at  
9 MS-31; correct?

10 A. Yes.

11 Q. So were those some of those pills you wanted and some of  
12 them you didn't?

13 A. Okay, yeah. I had forgotten about the oxycodone. But we  
14 did have half of those, split them.

15 Q. Okay. What about those other ones, the ones that weren't  
16 controlleds, what happened with those? Did you care about  
17 them? Did you want them?

18 A. I don't even think he filled them. I don't know.

19 Q. Okay. What about the morphine?

20 A. No.

21 Q. He didn't fill them?

22 A. I don't know. It was just the oxycodone ones.

23 Q. That's what he wanted?

24 A. Yeah.

25 Q. Why did you want the oxycodone?

1 A. Because my husband -- boyfriend was buying them and it  
2 was cheaper, you know, not to have to buy 'em.

3 Q. Okay. How long a drive was it for you and Bryan to get  
4 to Martinsville?

5 A. I can't remember. Maybe three hours. Maybe longer. I  
6 really -- I don't remember.

7 Q. Did you ever go?

8 A. Yeah.

9 Q. Okay. It's a lot more than three hours, isn't it?

10 A. Maybe five. It's been a long time ago, I just don't  
11 remember.

12 Q. Okay. You understand you have to tell the jury the  
13 truth; right?

14 A. Yes.

15 Q. Okay. Do you want to tell them the truth about why you  
16 really got the pills?

17 A. That's why.

18 Q. You said it was because your husband was buying them on  
19 the street --

20 A. Yeah, he was buying them on the street.

21 Q. -- and he was a drug addict. And what about you?

22 A. At that time, no.

23 Q. Ma'am, do you remember testifying to the grand jury?

24 A. Yes.

25 Q. And that you were required to tell the truth?

1 A. Yes.

2 Q. And do you remember you tried the same thing, saying that  
3 you didn't take 'em?

4 A. Yes.

5 Q. You eventually admitted that you yourself snorted the  
6 pills.

7 A. I did eventually take them. But when I first went, I did  
8 not take pills.

9 Q. So when you first started going, you weren't snorting  
10 'em?

11 A. No.

12 Q. But when you -- as you went, you got more pills, you  
13 started snorting the pills yourself?

14 A. Yes.

15 MR. WILLIAMS: Your Honor, I'm going to object to  
16 the leading question.

17 THE COURT: Overruled.

18 BY MR. RAMSEYER:

19 Q. And when you were snorting them, why were you snorting  
20 them?

21 A. To get high, I mean.

22 Q. Okay.

23 A. Energy.

24 Q. And were there other people that Darryl Williams was  
25 setting up to go down and see Dr. Smithers?

1 A. Yes.

2 Q. Who were they?

3 A. I only know my brother-in-law and Bryan, I mean.

4 Q. Who is your brother-in-law?

5 A. Greg Harlow.

6 Q. Those are the only ones you know about?

7 A. Basically, yes.

8 Q. And when you went to see Dr. Smithers to get pain pills,  
9 was there anything wrong with you?

10 A. No.

11 Q. Okay. Did you just walk in and say, hey, doc, there's  
12 nothing wrong with me, I just want a bunch of pain pills?

13 A. No.

14 Q. Okay. Why didn't you say that?

15 A. I'd been coached. I knew he had to have a reason to give  
16 'em to me.

17 Q. Okay. So what did you say?

18 A. I really can't remember. I had back pain.

19 Q. Did you tell him you had been in a car wreck?

20 A. Maybe, yeah.

21 Q. All right. So you went there -- how many times did you  
22 go there, do you remember?

23 A. Let's see, maybe three or four.

24 Q. Okay. And when you went there, did you see the doctor?  
25 Did you ever see Dr. Smithers?

1 A. When I went? Yes.

2 Q. Yes. Were there times the prescriptions were in your  
3 name you didn't see him?

4 A. Yes.

5 Q. Okay. What happened in those situations?

6 A. He mailed them or somehow Darryl got 'em. I don't know.

7 Q. Okay. So Darryl got 'em mailed in your name?

8 A. Yes.

9 Q. Did you fill them?

10 A. No.

11 Q. So how did they get filled, do you know?

12 A. I have no idea.

13 Q. Are you talking about the ones that were mailed?

14 A. Yes.

15 Q. How did you know it happened?

16 A. He would call Bryan.

17 Q. And give him half the pills or what?

18 A. Yeah.

19 Q. Now, could you afford to pay -- it's \$450 when you first  
20 went, were you able to pay that?

21 A. Did I pay it?

22 Q. Yes.

23 A. No.

24 Q. Who paid for it?

25 A. Darryl would give us money to pay him.

1 Q. Okay. And then when you were repeat visits for \$300, how  
2 would you pay that?

3 A. The same.

4 Q. Okay. Now when you testified before the grand jury that  
5 you said you went to Dr. Smithers's office a couple times, and  
6 then the next three times Darryl just called you and told you  
7 the prescriptions were filled and you'd get your half.

8 A. I think the first time I went, and then the next couple  
9 of times it started to be bad weather, so Darryl would just  
10 call.

11 Q. Okay. Now, in the area you live, is there a problem with  
12 oxycodone, oxymorphone? Do you have people using it on the  
13 street?

14 A. Yes.

15 Q. What does it sell for on the street? What's the  
16 oxycodone sell for, back in this time period, '15-'16? You  
17 said your boyfriend was buying them.

18 A. \$50 a pill.

19 Q. Okay. Did you have enough money to buy the  
20 prescriptions?

21 A. No.

22 Q. Okay. Who was paying for the prescriptions?

23 A. Darryl was.

24 Q. Did you have any kind of insurance?

25 A. Yes.

1 Q. What did you have?

2 A. Through the hospital.

3 Q. Okay. Why didn't you use your insurance to pay for  
4 Dr. Smithers's office visit?

5 A. I didn't really know if it was an option. I didn't think  
6 he took insurance.

7 Q. Okay. If you had like a real medical problem, would you  
8 have gone to Dr. Smithers?

9 A. No.

10 Q. Okay. When you actually saw him, what did he do?

11 A. Just took my blood pressure and asked a few questions.

12 Q. Okay. And did he do anything else?

13 A. Not that I can remember, no.

14 Q. Okay. Did you get your prescriptions?

15 A. Yes.

16 Q. Okay. Now there was a time you went there, did you have  
17 to give a urine screen sometimes when you went?

18 A. I think once.

19 Q. Okay. Who took the urine screen?

20 A. There was another guy that worked with him.

21 Q. Okay.

22 A. I don't know his name.

23 Q. All right. And do you remember there was a time in your  
24 urine screen you tested positive for hydrocodone?

25 A. Mm-hmm.

1 Q. Is that a "yes"?

2 A. Yes.

3 Q. And he hadn't prescribed you hydrocodone, had he?

4 A. No.

5 Q. So where did you get that?

6 A. Probably bought it.

7 Q. Bought it where?

8 A. Off the street.

9 Q. Okay. So did Dr. Smithers ask you about that?

10 A. Yes.

11 Q. Okay. What did you tell him?

12 A. The truth.

13 Q. You told him the truth?

14 A. I think so. I mean, I can't -- I don't know what I told  
15 him, actually. I can't -- I don't know.

16 MR. RAMSEYER: Can I approach the witness,  
17 Your Honor?

18 THE COURT: You may.

19 BY MR. RAMSEYER:

20 Q. Looking at MS-62, the patient file from Michelle Smith.  
21 It says, "Patient reports hydro due to cough syrup from  
22 illness."

23 Did you tell him that?

24 A. I don't -- I don't remember that I did or that I did not.  
25 I don't know.



1 Q. Okay. Are you still abusing pain medications?

2 A. No.

3 Q. When did you quit?

4 A. Right -- after the federal agents came and talked to us.  
5 And I found a Suboxone program and that's what I do.

6 Q. So you get Suboxone now?

7 A. Yes.

8 Q. It's another opiate.

9 A. I think it's -- I don't know, maybe.

10 Q. Do you get that every month?

11 A. Huh?

12 Q. Do you get that every month?

13 A. Yes.

14 Q. When you went to Dr. Smithers's clinic, were there other  
15 patients there?

16 A. Sometimes, yes.

17 Q. Okay. And when you went there, there's a waiting area.  
18 Did you wait out there?

19 A. Yeah.

20 Q. And when you went -- when your name got called, or  
21 whatever, did you -- what happened?

22 A. We went back to his office, to a room.

23 Q. Okay. What was in that room?

24 A. A chair, computer.

25 Q. Was there a computer?

1 A. A laptop.

2 Q. And who did you speak with?

3 A. Dr. Smithers.

4 Q. All right.

5 A. Well, when you first went, you talked to -- I don't know,  
6 they called him a counselor. And, you know, he doesn't -- I  
7 don't know what, maybe a Casper. I'm not sure what he did.  
8 But you saw him and then you saw Dr. Smithers.

9 Q. Okay. And did there come a time when Darryl Williams  
10 quit arranging for you to go down there?

11 A. No.

12 Q. At some point you quit going?

13 A. Well, we got in trouble.

14 Q. All right. That time when you tested positive for  
15 hydrocodone, at least in the notes, it says you said you got  
16 cough syrup. Did you still get your Schedule II drugs after  
17 that?

18 A. Yes.

19 Q. Ma'am, when you were -- when you were illegally using the  
20 pills, you say you were snorting them?

21 A. Yes.

22 Q. What did that do to the inside of your nose?

23 A. Made it run. I mean, I don't --

24 Q. It's not good for your nose, is it?

25 A. No.

1 Q. When you were using pills and snorting, how many were you  
2 snorting a day?

3 A. Just a couple. Not -- like, maybe one when I got up and  
4 then one half through the day or so.

5 Q. Okay.

6 MR. RAMSEYER: Your Honor, I think later in the day,  
7 or early tomorrow, we're going to move to admit all the  
8 patients files that are relevant. At this time I'd like to  
9 move into evidence Government's Exhibit MS and Government's  
10 Exhibit 2, which are the records for Michelle Smith and then  
11 the other records I was referencing when talking to the  
12 witness.

13 THE COURT: Okay. It will be admitted.

14 MR. RAMSEYER: It's two exhibits, Your Honor, MS-1,  
15 and MS-2.

16 THE COURT: They will both be admitted.

17 MR. RAMSEYER: Some other MS-2 are copies of some  
18 prescriptions that were found in the office for Ms. Smith.

19 (Government's Exhibit MS-1 marked and received.)

20 (Government Exhibit MS-2 marked and received.)

21 MR. RAMSEYER: Thank you, ma'am. Please answer  
22 defense counsel's questions.

23 THE COURT: Okay. Cross-examination.

24 MR. WILLIAMS: May we have a moment at side bar,  
25 please?

1 THE COURT: I'm sorry?

2 MR. WILLIAMS: May we have a moment at sidebar,  
3 please?

4 THE COURT: Ladies and gentlemen, I need to talk  
5 with the lawyers. If you'll follow the bailiff out, please.

6 (Proceedings held in the absence of the jury.)

7 MR. WILLIAMS: Your Honor, I had one issue. I  
8 didn't know that he had admitted the entire record of  
9 Ms. Smith, and I wanted to make sure I had access to those  
10 records. It's my understanding he has admitted the full  
11 record. We have no objection to that. And I was just  
12 concerned that we had had an agreement that we were going to  
13 agree to admit all of the records, and I was concerned with  
14 the way he said that he hadn't admitted the records. That's  
15 why I wanted just to clarify prior to that. It's my  
16 understanding he has. I'm prepared to go forward now, so.

17 THE COURT: Okay. Well, Mr. Williams, before -- I  
18 don't have bench conferences. It's too difficult. The  
19 defendant needs to be present, too many people in front.

20 MR. WILLIAMS: I understand.

21 THE COURT: It's hard to hear.

22 MR. WILLIAMS: I understand.

23 THE COURT: So I need to remove the jury when you  
24 have objections that have to be argued.

25 MR. WILLIAMS: I understand. I apologize.

1 THE COURT: So before you ask for, you know, a  
2 conference with the Court, if you would first just quietly  
3 talk to the U.S. Attorney. And that's perfectly all right.  
4 Do it quietly so the jury doesn't hear. And that way we don't  
5 have to remove the jury and, you know, delay the process of  
6 the trial.

7 MR. WILLIAMS: I understand. I apologize,  
8 Your Honor.

9 THE COURT: Yes, sir.

10 MR. WILLIAMS: Okay.

11 THE COURT: So I've admitted these records.

12 MR. WILLIAMS: Your Honor, I'm ready.

13 THE COURT: So, Mr. Williams, are you ready for your  
14 cross-examination of this witness?

15 MR. WILLIAMS: I am, Your Honor.

16 THE COURT: All right. We'll have the jury back in,  
17 please.

18 (Proceedings held in the presence of the jury.)

19 THE COURT: All right. Mr. Williams, you may  
20 cross-examine.

21 **CROSS-EXAMINATION**

22 BY MR. WILLIAMS:

23 Q. Ms. Smith, I think you testified there earlier, you first  
24 started seeing Dr. Smithers in November of 2015; is that  
25 correct?

1 A. Yes.

2 Q. And at that time I think you said that you had -- did you  
3 discuss several things with Dr. Smithers at that time about  
4 what your problems were?

5 A. Yes.

6 Q. Okay. Do you recall telling him you had lower back pain?

7 A. Yes.

8 Q. Okay. And do you recall telling him that on the present  
9 pain scale, you said the worst it got was 9 to 10? Does that  
10 sound correct?

11 A. Yes. I mean, I don't remember. But, yes.

12 Q. Okay.

13 A. Probably.

14 THE COURT: Well, ma'am, if you don't remember, you  
15 can't guess. All right. So if you don't remember, you have  
16 to say, "I don't remember." Just don't guess.

17 THE WITNESS: Okay.

18 THE COURT: All right?

19 THE WITNESS: Yes, sir.

20 BY MR. WILLIAMS:

21 Q. If Dr. Smithers had written down your pain at worst was 9  
22 to 10, does that sound like something you would have told him?

23 A. I don't remember.

24 Q. Okay.

25 MR. WILLIAMS: May I approach the witness,

1 Your Honor?

2 THE COURT: You may.

3 MR. WILLIAMS: I'll show you what is MS Exhibit 32.

4 BY MR. WILLIAMS:

5 Q. Can you tell the Court what that is, or tell the members  
6 of the jury what that is.

7 That is an initial pain assessment tool.

8 A. Yes.

9 Q. Okay. And what name is the patient's name?

10 A. Michelle Smith.

11 Q. Okay. I'm asking you to show, -- it says "worst pain."  
12 What does it say beside that?

13 A. Eight.

14 Q. Okay. That's present pain --

15 A. No, present pain.

16 Q. What does it say "worst pain" is?

17 A. Nine to ten.

18 Q. Okay. Does that sound like something that you would have  
19 told him at that time?

20 A. I don't know.

21 Q. Okay. You're not saying he made that up, are you?

22 A. I'm saying I don't remember him asking.

23 Q. Okay. All right. Did he take your blood pressure at  
24 that time?

25 A. Yes.

1 Q. Okay. And heart rate?

2 A. Yes.

3 Q. Okay. It says, "Heart rate 65." Does that sound like  
4 that would have been --

5 A. Yes.

6 Q. So he did some -- he did talk to you about several  
7 things, did he not, when you went in there?

8 A. (Nods head.)

9 Q. I think you told him you had been involved in a motor  
10 vehicle accident; is that correct?

11 A. I do remember that, yes.

12 Q. Okay. And that motor vehicle accident was approximately  
13 in 2015; is that right?

14 A. Yes.

15 Q. Did the motor vehicle accident occur or not?

16 A. Yeah.

17 Q. Okay. And what happened in the motor vehicle accident?

18 A. I was side swiped.

19 Q. Okay. And so did you actually have back pain of 8 to 9  
20 at that point in time?

21 A. No.

22 Q. Okay. So you at that time were lying to Dr. Smithers; is  
23 that correct?

24 A. Yes. If I told him that, that was a lie, yes.

25 Q. Okay. And did you tell him that your chief complaint was



1 chronic pain and lower back pain?

2 A. Yes.

3 Q. Okay. And did you tell him that you had primarily seen  
4 Dr. Soma before?

5 A. Yes.

6 Q. Okay. It says on the form there that you stated that you  
7 had pain bending forward, increased pain; does that sound  
8 correct?

9 A. Again, I -- I don't remember him asking those questions.

10 Q. Okay. All right. Did -- how would -- why would he have  
11 said that you had trouble bending forward if you hadn't told  
12 him that?

13 THE COURT: Well, I don't know that the witness can  
14 answer that question, Mr. Williams.

15 MR. WILLIAMS: Okay.

16 BY MR. WILLIAMS:

17 Q. Did you state that you had dull, aching pain?

18 A. Yes.

19 Q. And hot burning pain?

20 A. Yes.

21 Q. It changed in severity, but was always present?

22 A. I don't remember that.

23 Q. Okay. Did you remember telling him that physical therapy  
24 hadn't helped you?

25 A. Yes.

1 Q. Okay. And that it caused numbness and tingling in your  
2 hips and thigh?

3 A. Yes.

4 Q. Okay. And all of that was incorrect; is that right?

5 A. Yes.

6 Q. Okay. And you told him -- did you provide an MRI to him?

7 A. No.

8 Q. Okay. Did you tell him you had an MRI?

9 A. No.

10 Q. You didn't tell him you had an MRI of the lumbar and hip  
11 in April of 2015?

12 A. No.

13 Q. Okay. Didn't tell him you had an x-ray in April of 2015?

14 A. No.

15 Q. So you're saying that you never told him that and if  
16 those are in the medical records, they would be incorrect?

17 A. Right.

18 Q. Okay. Did you tell him that you had been to a physical  
19 therapist over it?

20 A. Yes.

21 Q. You had been to see an orthopedic surgeon?

22 A. I don't remember saying that.

23 Q. Don't recall? Okay.

24 What kind of medications had you been on prior?

25 A. None.

1 Q. You had not been on any prior medications?

2 A. No.

3 Q. Okay. You hadn't been on anything for -- for anything  
4 prior to that, hadn't been on Oxycontin 20 milligrams prior to  
5 that?

6 A. No.

7 Q. Taken twice daily?

8 A. No.

9 Q. You didn't tell him that?

10 A. I don't remember.

11 Q. You don't recall?

12 A. I don't recall. I don't.

13 Q. Okay. So you're not sure whether you told him or not.

14 MR. WILLIAMS: May I approach the witness,  
15 Your Honor?

16 THE COURT: Well, the record is in the record. I  
17 mean, she says she can't remember.

18 MR. WILLIAMS: Okay. All right.

19 THE WITNESS: It was 12:00 at night when I saw him.

20 MR. WILLIAMS: Okay.

21 THE WITNESS: So I don't remember.

22 THE COURT: It was 12:00 at night?

23 THE WITNESS: It was late at night, yes.

24 THE COURT: So he was having office hours at that  
25 time?

1 THE WITNESS: (Nods head.)

2 THE COURT: Is that a "yes"?

3 THE WITNESS: Yes. Yes.

4 BY MR. WILLIAMS:

5 Q. Do you recall doing --

6 THE COURT: Let me ask you this, ma'am. Did he ask  
7 you why you had -- did he ask you where you were from? Is  
8 that in the record? Or did he ask you that?

9 THE WITNESS: No. He didn't ask. I mean, he  
10 already knew. I didn't, you know, make the appointment. I  
11 mean, I just showed up.

12 THE COURT: Did he ask you -- I take it that you  
13 told him your address; is that correct?

14 THE WITNESS: Yes, I'm --

15 THE COURT: Did he ask you why you were coming to  
16 see him?

17 THE WITNESS: No.

18 THE COURT: Okay. Go ahead.

19 BY MR. WILLIAMS:

20 Q. Ms. Smith, do you remember filling out an SOAPPR form?  
21 It was asking you to answer as honestly as possible about your  
22 pain. Do you recall filling out one of those?

23 A. Yeah.

24 Q. Okay. And you checked on those different things, did you  
25 not?

1 A. Yes.

2 Q. Okay. How often had you had mood swings?

3 A. Yes.

4 Q. Okay. And how often had you felt the need for higher  
5 doses of medication to treat your pain? Do you recall that?

6 A. I would have to see --

7 Q. Do you recall filling out the form?

8 A. I would have to see the paper before I can say.

9 MR. WILLIAMS: I'm referring to MS-042.

10 THE WITNESS: I remember, yes.

11 BY MR. WILLIAMS:

12 Q. Okay. You completed MS-43; is that correct?

13 A. Yes.

14 Q. And so did you answer those?

15 A. Sometimes he would fill those out and ask me the  
16 questions as he went through 'em.

17 Q. Okay. But he answered what you told him, did he not?

18 A. I don't know. I mean, I didn't see what he marked.

19 Q. If it says that you said you often felt need for higher  
20 doses of medication to treat your pain, you're saying you lied  
21 about that on that form?

22 A. If I said that, yes. I mean, yes, I lied.

23 Q. You saw Dr. Smithers how many times?

24 Actually, let's just go through --

25 A. I don't --

1 Q. Okay. It says -- I think that's on 7-18-16, you saw him  
2 on that date; does that sound correct?

3 A. Yes.

4 Q. It says here that your pain was -- pain level was worst  
5 was 5 and lowest of 3; does that sound correct?

6 A. Yes.

7 Q. Okay. Indicates that your pain was well controlled by  
8 pain -- by the medication.

9 A. Yes.

10 Q. Okay. Do you recall filling out an Opioid Maintenance  
11 Agreement?

12 A. Yes.

13 Q. Okay. Do you recall what that agreement said?

14 A. No.

15 Q. Did you read it?

16 A. I don't recall.

17 Q. You don't recall if you read it or not?

18 A. No.

19 Q. So you typically just sign something that you don't read?

20 A. Under those circumstances, yes.

21 Q. Okay. With the Opioid Maintenance Agreement -- you  
22 stated that you gave your pills out, did you not? You gave  
23 your pills to Mr. Williams? You gave part of your pills --  
24 you gave him the prescription, he gave you part of the pills  
25 and then he kept part, that's what your testimony was;

1 correct?

2 A. Yes.

3 Q. Okay. And as part of the Opioid Maintenance Agreement,  
4 paragraph No. 8 says, "You agree that you will not give or  
5 sell your medications to any other person under any  
6 circumstances. If you do so, you may endanger that person's  
7 health and it is also against the law."

8 Do you recall signing that?

9 A. Yes.

10 Q. Okay. So you violated that agreement that you had --

11 A. Yes.

12 Q. -- there; correct?

13 You didn't tell Dr. Smithers what you were doing,  
14 did you?

15 A. No.

16 Q. Because you knew he would cut you off and he wouldn't see  
17 you anymore, didn't you?

18 You knew that he would dismiss you as a patient; is  
19 that correct?

20 A. If I told him?

21 Q. Yeah.

22 That's what your fear was, wasn't it?

23 A. My fear?

24 Q. Yeah.

25 A. I didn't -- I mean, it just -- he never asked.

1 Q. Paragraph No. 10, I'm referring to MS-67, Document MS-67,  
2 states that, "You will communicate fully to your physician to  
3 the best of your ability at the initial and all follow-up  
4 visits your pain level and functional activity level, along  
5 with any side effects of the medication. This information  
6 allows your physician to adjust your treatment plan  
7 accordingly."

8 You violated that agreement, didn't you?

9 A. Yeah.

10 Q. You didn't tell him what was wrong with you.

11 A. Mm-hmm.

12 Q. You lied to him about what all was happening with you.  
13 You lied to him about having an MRI done. Lied to him about  
14 your pain level. You can answer.

15 A. Yes.

16 Q. Lied to him about every one of those, did you not?

17 A. Yes.

18 Q. On your initial assessment, Dr. Smithers came up with you  
19 had chronic back pain, that was due to what you had told him;  
20 correct?

21 A. Yes.

22 MR. RAMSEYER: Your Honor, objection.

23 THE COURT: She wouldn't know that.

24 MR. WILLIAMS: I withdraw that.

25 THE COURT: Mr. Williams, move along, please.



1 BY MR. WILLIAMS:

2 Q. Ms. Smith, have you ever been charged with a crime?

3 A. No.

4 Q. You've not.

5 A. Other than speeding or, like, deer tags or something,  
6 but...

7 Q. No felony charge or --

8 A. No.

9 Q. -- crime of lying, cheating, or stealing?

10 A. No.

11 MR. WILLIAMS: May I have just a moment, Your Honor?

12 BY MR. WILLIAMS:

13 Q. Your testimony is that you had never taken opiates before  
14 prior to this; is that correct?

15 A. Yes.

16 MR. WILLIAMS: Okay. No further questions.

17 THE COURT: All right. Any --

18 MR. RAMSEYER: I just didn't hear the last question.

19 MR. WILLIAMS: I asked her --

20 THE COURT: Wait a minute.

21 THE WITNESS: Well, can I clarify something --

22 THE COURT: Yes, ma'am.

23 THE WITNESS: -- please?

24 I've had two C-sections, and I was given medicine  
25 after those. But that's -- was maybe hydrocodone and that's

1     been it.

2                   THE COURT:   The question to her was whether she had  
3     taken opiates before this.   Or the question was:   "Your  
4     testimony is that you'd never taken opiates before this; is  
5     that correct?"

6                   And she said, "Yes."

7                   That was the answer.   And she's just added on to  
8     what you've heard.

9                   **REDIRECT EXAMINATION**

10    BY MR. RAMSEYER:

11    Q.    So, ma'am, when you got C-sections, you had hydrocodone  
12    for a few days?

13    A.    Yes.

14    Q.    But you've taken opiates on the street, haven't you?   You  
15    said you snorted them.

16    A.    Yes.

17    Q.    Was that all after you went to Dr. Smithers?

18    A.    Yes.

19    Q.    All?   You never snorted an opiate pill before you went to  
20    Dr. Smithers?

21    A.    Snorted?   No.

22    Q.    Did you abuse them before then?

23    A.    You mean --

24    Q.    Did you take pills that weren't prescribed to you by a  
25    doctor before?

1 A. I have, yes.

2 Q. And those were opiates?

3 A. Yes.

4 Q. At a party or something? Or what were you doing?

5 A. Yeah. I mean, no, not a party. Like, my boyfriend  
6 would, you know -- he was prescribed them and I'd have a  
7 headache and take 'em. But, you know, it wasn't to get high  
8 then.

9 Q. Okay. Now, the defense attorney asked you some questions  
10 about these documents you were signing. You didn't read 'em,  
11 did you?

12 A. I can't remember. I mean, I don't know if I -- typically  
13 I would, but...

14 Q. Well, let me ask you, when you went to Dr. Smithers, were  
15 you going to get real medical treatment?

16 A. No.

17 Q. What were you going for?

18 A. Pills.

19 Q. Okay. And were you going to sign anything you had to  
20 sign to get pills?

21 A. Yes.

22 Q. All right. For instance, I'm going to show you page  
23 MS-67, which is this agreement.

24 MR. RAMSEYER: If we could switch to this. It's  
25 already introduced, so the jury can see it.

1 BY MR. RAMSEYER:

2 Q. It's already been introduced into evidence. Page 667.

3 This is an Agreement for Opioid Maintenance Therapy for Pain.

4 Here's page 1. Here's page 2. Is that your signature down  
5 there?

6 A. Yes.

7 Q. It's dated November 30th of '15; correct?

8 A. Yeah.

9 Q. And one of the things on this agreement is you're  
10 supposed to tell the doctor which pharmacy you're going to  
11 use, because you can only use one pharmacy according to  
12 agreement. Did you do that, No. 2?

13 A. Yes.

14 Q. You didn't even fill it out, did you?

15 A. No.

16 Q. Just signed the back of the form.

17 Anybody ask you, you have to fill this out. For  
18 this to mean something, it has to be filled out. Anybody say  
19 that?

20 A. No.

21 Q. And every time you went to see Dr. Smithers, did you get  
22 what you wanted?

23 A. Yes.

24 MR. RAMSEYER: Thank you.

25 THE COURT: Anything further?

**RECROSS-EXAMINATION**

BY MR. WILLIAMS:

Q. Ms. Smith, at the time that you filled that out, did you indicate to Dr. Smithers that you didn't know which pharmacy you were going to use at that time? Do you recall saying that?

A. I don't recall.

Q. Okay. You also stated, I think, that you had had a tubal ligation; is that true?

A. Yes.

Q. Okay. And that was back in 2008?

A. Yes.

Q. Okay. Did you receive pain medicine for that?

A. I had a C-section, and they done it right after -- you know, it was more procedure, back to back.

Q. Did you receive any kind of pain medicine for that?

A. When I had the C-section, yes.

MR. WILLIAMS: Okay. All right. Thank you.

No further questions.

THE COURT: Anything further?

MR. RAMSEYER: No further questions, Your Honor.

THE COURT: All right. Thank you, ma'am.


You may step down.

(Testimony of Michelle Smith concluded at 11:57 a.m.)

**REPORTER'S CERTIFICATE**

I, DONNA J. PRATHER, do hereby certify that the above and foregoing, consisting of the preceding 37 pages, constitutes a true and accurate transcript of my stenographic notes and is a full, true and complete transcript of the proceedings to the best of my ability.

Dated this 23rd day of May, 2019



DONNA J. PRATHER, RPR, CRR, CBC, CCP  
Federal Official Court Reporter

Donna Prather, CCR, RPR, CCP, CCB

Official Court Reporter for the U.S. District Court Western District of Virginia



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Donna Prather, CCR, RPR, CCP, CCB

Official Court Reporter for the U.S. District Court Western District of Virginia



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